



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

September 3, 2019

Michael D. Pepoon
Interim County Counselor
Sedgwick County Counselor's Office
525 N. Main, Suite 359
Wichita, KS 67203

By e-mail to Michael.Pepoon@sedgwick.gov (Hard copy will not follow)

Dear Mr. Pepoon:

We received your e-mail dated August 29, 2019. You advise of the intention of the Sedgwick County Commission to consider at its September 4, 2019, meeting a proposed resolution purporting to direct that the following proposition be placed on the November 5, 2019, ballot in Sedgwick County: "Shall the Kansas lottery be authorized to place electronic gaming machines at a single pari-mutuel licensee facility in Sedgwick County?" ("the Resolution").

You invite a response of the Office of the Attorney General to the consideration of the Resolution. In Attorney General Opinion 2016-6, we observed that state law authorized an election in Sedgwick County no more than 180 days after April 19, 2007. In a timely election on August 7, 2007, Sedgwick County voters rejected a proposal to authorize the installation of Electronic Gaming Machines (EGMs) at the racetrack gaming facility in the county. The result of that election, under current law, is that "the Kansas lottery *shall not* place or operate electronic gaming machines at a pari-mutuel licensee location in the county." AG Op. 2016-6, p. 9, line 6 (emphasis added). The 180 days for conducting such an election in Sedgwick County is now long past. Thus, implicit in our Opinion is our conclusion that current state law does not authorize a revote in Sedgwick County. Our legal opinion expressed in AGO 2016-6 remains unchanged.

Moreover, even if a revote were somehow legally authorized, other consequences would follow (*at least* if voters were to approve installation of EGMs, and perhaps in any event). Also in AGO 2016-6, we addressed the following question:

"Would enactment of the provision of 2016 House Bill 2537 that authorizes a revote on the placement of EGMs at a racetrack facility in Sedgwick County render the State liable

to refund the privilege fee paid to the State under terms of the lottery gaming facility management contract between the Kansas Lottery and the lottery gaming facility manager in the south central gaming zone?"

We concluded "the answer to that question is yes for three separate reasons, any one of which standing alone would lead to the same conclusion." While AGO 2016-6 specifically addressed a revote authorized by new state legislation, its reasoning applies to a revote otherwise authorized, including the one purported to be authorized by the county resolution you provided with your August 29, 2019, email.

It remains true, as I advised during our August 2, 2019, meeting, that I have not committed to what action, if any, the Office of Attorney General might take in the event Sedgwick County were to adopt this resolution. But I must be clear that this Office reserves all legal options at our disposal to protect the interests of the State of Kansas. While the State may have several interests in this matter, at a minimum it is certain the State has an interest in avoiding unnecessary costs, including any potential obligation to refund one or more privilege fees.

Nor can I predict what response might follow from other persons or entities if the proposed resolution were adopted, although as we further concluded in Attorney General Opinion 2016-6: "[W]e think the Manager in the South Central gaming zone would have a cause of action to demand repayment of the privilege fee, to seek other damages or remedies allowed by contract law, or to enjoin the enforcement of any new statute permitting a revote on placement of EGMs at the Sedgwick County racetrack facility."

Overall, it seems plainly foreseeable that adoption of this resolution would invite litigation involving the county. I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek Schmidt". The signature is fluid and cursive, with the first name "Derek" and last name "Schmidt" clearly distinguishable.

Derek Schmidt
Kansas Attorney General